

ESTTA Tracking number: **ESTTA137973**

Filing date: **04/27/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	76127133
Applicant	DIGITAL OILFIELD INC
Applied for Mark	DIGITAL OILFIELD
Correspondence Address	THOMAS J. MOORE BACON & THOMAS PLLC 625 SLATERS LN FL 4 ALEXANDRIA, VA 22314-1176 UNITED STATES
Submission	Appeal Brief
Attachments	2007.04.27.Applicant's Brief.pdf ( 25 pages )(122959 bytes )
Filer's Name	Thomas J. Moore
Filer's e-mail	tjmoore@baconthomas.com
Signature	/ThomasJMoore/
Date	04/27/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Application Serial No.:</b>	<b>76127133</b>
Application Filing Date:	September 14, 2000
Mark:	DIGITAL OILFIELD
Owner/Applicant:	Digital Oilfield Inc.
Attorney's Reference:	DIGI6002/TJM

**APPLICANT'S BRIEF**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Thomas J. Moore  
Applicant's Attorney

BACON & THOMAS, PLLC  
625 Slaters Lane, Fourth Floor  
Alexandria, Virginia 22314-1176  
Phone: 703-683-0500  
Fax: 703-683-1080  
E-mail: mail@baconthomas.com

TABLE OF CONTENTS

<u>Item</u>	<u>Page(s)</u>
TABLE OF AUTHORITY. ....	ii
INDEX OF CASES AND AUTHORITIES. ....	iii
DESCRIPTION OF THE RECORD. ....	1
STATEMENT OF THE ISSUE. ....	6
ARGUMENT. ....	8
I. THE STANDARD OF REVIEW. .....	8
II. THE LAW REQUIRES THAT THE OFFICE PROVE THAT THE MARK IS GENERIC. .....	8
III. THE OFFICE HAS NOT MET ITS BURDEN TO PROVE THAT THE MARK IS GENERIC. .....	9
A. THE RECORD DOES NOT PROVE THAT THE MARK IS GENERIC. .....	10
CONCLUSION. ....	22

**APPLICANT’S BRIEF**  
**U.S. Application No. 76127133**

**TABLE OF AUTHORITY**

<u>Cases</u>	<u>Page(s)</u>
<i>AFG Industries, Inc., In re,</i> 17 U.S.P.Q.2d 1162 (T.T.A.B. 1990). . . . .	8
<i>American Fertility Society, In re the,</i> 188 F.3d 1341 (Fed. Cir. 1999). . . . .	8, 9
<i>Bose Corp., In re,</i> 772 F.2d 866 (Fed. Cir. 1985). . . . .	8
<i>H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.,</i> 782 F.2d 987 (Fed. Cir. 1986). . . . .	8
<i>Merrill Lynch, Pierce, Fenner &amp; Smith Inc., In re,</i> 828 F.2d 1567 (Fed. Cir. 1987). . . . .	9
 <u>Statutes</u>	 <u>Page(s)</u>
15 U.S.C. §1091 (2002). . . . .	6
 <u>Other</u>	 <u>Page(s)</u>
Trademark Manual of Examining Procedure (TMEP) §1209.01(c)(i) (April, 2005). . . . .	9

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

**DESCRIPTION OF THE RECORD**

The present application was filed on September 14, 2000, requesting registration of the mark DIGITAL OILFIELD in a typed drawing for goods and services based upon the priority of Canadian Application No. 1052163 filed March 24, 2000.

On March 8, 2001, an Office Action was mailed which objected to the mark as allegedly merely descriptive, objected to the goods and services as allegedly indefinite, and requested a copy of the foreign registration.

On September 7, 2001, an Amendment was filed which amended the goods and services, argued that the mark is not merely descriptive, and requested suspension because the foreign priority application was still pending.

On November 21, 2001, an Office Action was mailed which suspended the application pending the final disposition of the foreign priority application, and continued the other objections.

On May 20, 2002, a Suspension Inquiry was mailed.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

On October 24, 2002, a Response to Office Action was filed, which advised that the foreign priority application had not yet matured.

On May 23, 2003, a Notice of Suspension was mailed pending the final disposition of the foreign priority application, and continuing the other objections.

On September 1, 2003, a Response to Office Action was filed which submitted a copy of Canadian Registration No. TMA578356 which issued on the priority application, and amended the goods and services.

On October 8, 2003, a Submission of Fees was filed to pay the filing fee for each of classes 35 and 42.

On August 6, 2004, an Office Action was mailed which requested certain information, objected to the goods and services, and requested payment of additional filing fees.

On February 4, 2005, an Amendment was filed that amends the goods and services, provides certain information (including documents), argues that the mark is suggestive, and argues that the filing fee for Class 45 should not be required.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

On April 1, 2005, a final Office Action was mail which alleges that the mark is descriptive, that additional information should be submitted, that the services in Class 42 are indefinite, and that an additional filing fee is required.

On April 8, 2005, a Response to Office Action was filed which submitted a filing fee for an additional class.

On May 17, 2005, a Response to Office Action was filed which amends the goods and services, adds Class 38, and pays the filing fee for Class 38.

On June 23, 2005, an Office Action was mailed in view of the telephone conversation between the Examining Attorney and Applicant's attorney on June 2, 2005, which accepts the goods and services in Classes 9, 35, 38 and 45, objects to the services in Class 42, requests payment of an additional filing fee, requests additional information, and maintains the allegation that the mark is merely descriptive.

On September 20, 2005, a Response to Office Action was filed which amends the application to Supplemental Register and thereby overcomes the objection based on alleged descriptiveness, provides additional information, amends the services in Class 42, and submits an additional filing fee.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

On October 20, 2005, an Office Action was mailed which accepts the services in Class 42, and rejects the mark as allegedly generic.

On March 22, 2006, a Response to Office Action was filed with an online dictionary definition of “digital oilfield,” and an argument that the mark is not generic.

On April 10, 2006, a final Office Action was mailed with the sole objection that the mark is allegedly generic.

On October 6, 2006, a Notice of Appeal was filed together with a Response to Office Action, and additional documents. The Notice of Appeal requested suspension of the appeal and remand of the application to the Examining Attorney for consideration of the documents and Response to Office Action.

On October 24, 2006, an Office Action was mailed by the Trademark Trial and Appeal Board which alleged that the appeal was untimely and the application was abandoned.

On November 22, 2006, a Request for Reconsideration was filed that argued that the appeal was timely and the abandonment should be withdrawn.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

On December 19, 2006, a Petition to Revive for Unintentional Abandonment was filed which argued that the appeal was timely.

On January 31, 2007, the Trademark Trial and Appeal Board mailed an Office Action which instituted the appeal, granted the Request for Reconsideration filed November 22, 2006, suspended the appeal, and remanded the application to the Examining Attorney for consideration of the Response to Office Action and documents filed with the Notice of Appeal on October 6, 2006.

On February 23, 2007, an Office Action was mailed by the Examining Attorney which maintains the refusal, and returns the application to the Trademark Trial and Appeal Board for resumption of the appeal.

On February 28, 2007, the Trademark Trial and Appeal Board mailed an Office Action which allows the applicant 60 days in which to file a brief.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

**STATEMENT OF THE ISSUE**

Whether the final Office Action dated April 7, 2006, is correct in refusing registration on the grounds that the mark is generic for the goods and services, and precluded from registration on the Supplemental Register because it is incapable of identifying the goods and services by Section 23 of the Lanham Act, 15 U.S.C. §1091 (2002). The mark is DIGITAL OILFIELD (words only) for the following goods and services:

Class 9: computer software for business to business e-commerce services in the international oil and gas industry, namely, software used to facilitate the receipt, coding and authorization of invoices; computer software for business to business e-commerce services in the international oil and gas industry, namely, software for workflow coordination and automation, including planning, scheduling, procuring and conduction of tasks; computer software for business to business e-commerce services in the international oil and gas industry, namely, software that automates financial, operational and business workflow processes

Class 35: licensing of computer software for use in business-to-business electronic commerce in the field of oil and gas exploration

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

Class 38: provision of a site on the global computer network offering business to business e-commerce services to the international oil and gas industry, namely, inter-business communication, namely, electronic transmission of data and documents among users of computers; electronic data transmission for business to business communication services, business to business collaboration services and business to business e-commerce services by way of a global computer information network and internet site

Class 42: computer services, namely, creating indexes of information on computer networks for automated financial, operational and business workflow services in business-to-business electronic commerce in the oil and gas industry

Class 45: provision of a site on the global computer network offering business to business e-commerce services to the international oil and gas industry, namely, providing user authentication services in e-commerce transactions

**ARGUMENT**

**I. THE STANDARD OF REVIEW.**

In ex parte cases, the question is simply "whether or not, based on the record before the examiner, the examiner's action was correct." *In re Bose Corp.*, 772 F.2d 866, 869 (Fed. Cir. 1985). See also *In re AFG Industries, Inc.*, 17 U.S.P.Q.2d 1162 (T.T.A.B. 1990) (In determining an ex parte appeal, the Appeal Board's sole task is "to determine if the refusal to register was correctly made." *Id.* at 1163).

**II. THE LAW REQUIRES THAT THE OFFICE PROVE THAT THE MARK IS GENERIC.**

The U.S. Court of Appeals for the Federal Circuit has stated that "the correct legal test for genericness, as set forth in *Marvin Ginn*, requires evidence of the genus of goods or services at issue and the understanding by the general public that the mark refers primarily to that genus of goods or services." *In re the American Fertility Society*, 188 F.3d 1341, 1347 (Fed. Cir. 1999), citing in *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987 (Fed. Cir. 1986).

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

The burden is on the U.S. Patent and Trademark Office (PTO) to prove by clear evidence that the mark is generic:

Aptness is insufficient to prove genericness. The PTO must prove: (1) what the genus of the services the [applicant] provides is; and (2) that the relevant public understands the [allegedly generic term] to primarily refer to that genus of services provided by the [applicant].

*American Fertility*, 188 F.3d at 1347. “The examining attorney has the burden of proving that a term is generic by clear evidence.” Trademark Manual of Examining Procedure (TMEP) §1209.01(c)(i) (April, 2005), citing *In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, 828 F.2d 1567 (Fed. Cir. 1987).

**III. THE OFFICE HAS NOT MET ITS BURDEN TO PROVE THAT THE MARK IS GENERIC.**

The present record does not meet the heavy burden on the U.S. Patent and Trademark Office to prove that the mark is generic. The page limit on the present brief does not allow for discussion of each of the documents in the record. Therefore, the documents most recently added to the record are discussed below.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

**A. THE RECORD DOES NOT PROVE THAT THE MARK IS GENERIC.**

The Office Action dated February 23, 2007, maintains the refusal to register the mark “on the Supplemental Register because the proposed mark is incapable of identifying Applicant’s goods and services and distinguishing them from those of others,” which is stated in the final Office Action dated April 10, 2006. The Office Action dated February 23, 2007, maintains that “DIGITAL OILFIELD is generic for applicant’s goods and services.” Applicant understands that the Office Action asserts that the genus of the goods and services is applicant’s goods and services.

Applicant respectfully submits that the PTO has failed to make a *prima facie* case with respect to the applicant’s goods and services

The generic terms related to applicant’s goods and services include “electronic data interchange (EDI)” and “electronic invoicing (EI)” as stated in “EDI Giving Way To Electronic Invoicing” in *The American Oil & Gas Reporter* (November 2002) filed in the present application on October 6, 2006. Applicant’s goods and services do not relate to the actual production of oil and gas from oil fields.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

The Office Action dated February 23, 2007, asks Applicant to “see the attached NEXIS stories and Internet excerpts that show DIGITAL OILFIELD is generic for the applicant’s goods and services.” None of the attachments are pointed out as particularly relevant.

Article 1 is from the Associated Press Financial Wire dated January 30, 2007, under “Business News” and from “Walldorf, Germany. The Office Action does not cite any authority for the proposition that documents reflecting a term as allegedly generic in a foreign country, should affect the determination whether the term is allegedly generic in the United States. The article states that “SAP AG (NYSE: SAP)” today announced its eighth industry-focused collaboration effort, the Industry Value Network (IVN) for oil and gas. As the undisputed leader of business solutions in the oil and gas industry, SAP has expanded the successful IVN model....” Thus, this document reads more like a press release, as compared to an independent analysis. On the fourth unnumbered page of Article 1, the term “digital oil field” (3 words, not 2) is underlined. The relevant sentence reads “to help accelerate development of software innovations necessary for this industry to address such challenges, members of the IVN for oil and gas are initially collaborating on the focus topic of digital oil field and the hydro-carbon supply chain.” Thus, the term “digital oil field” is used for focus topics. There is no indication that it is used for “computer software for business to business e-commerce services in the international oil and gas industry,” as recited in Class 9 of the present application. There is no indication that it is used for “licensing of computer software” as recited in Class 35 of the present application. There is no indication that it is used for the “provision of a site

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

on the global computer network for *inter alia* business to business collaboration services” as recited in Class 38 of the present application. There is no indication that it is used for the “computer services” that are recited in Class 42 of the present application. There is no indication that it is used for the “provision of a site on the global computer network providing user authentication services” as recited in Class 45 of the present application.

On the fifth unnumbered page of Article 1, there is the sentence that “in other initiatives of the IVN for oil and gas, SAP has worked together with Implico and Accenture on a series of projects in the area of secondary distribution management and the digital oil field, respectively.” Thus, the article indicates that “digital oil field” is the name of a series of projects with the consulting firm Accenture. There is no indication that “digital oil field” is used for computer software for business-to-business e-commerce services, or for licensing of computer software, or for provision of a site on the global computer network, or for computer services, as recited in Classes 9, 35, 38, 42 and 45 of the present application.

On the sixth unnumbered page of Article 1, the article states that “the digital oil field is both a solution and a problem, producing more data than ever before. It is critical for oil and gas companies to make the most of all that new information.” Thus, the article appears to assert that “digital oil field” means “new information.” This does not establish that the present mark DIGITAL OILFIELD is incapable of distinguishing computer software for business-to-business e-commerce

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

services in the international oil and gas industry, or for licensing of computer software, or for provision of a site on the global computer network offering *inter alia* business-to-business collaboration services, or for computer services, or for provision of the site of a global computer network offering user authentication services, as recited in Classes 9, 35, 38, 42 and 45 of the present application.

Article 2 attached to the Office Action dated February 23, 2007, appears to be a copy of Article 1.

Article 3 attached to the Office Action dated February 23, 2007, is from Business Wire, Inc. dated October 2, 2006, with the headline "Landmark Introduces an Affordable and Scalable Volume Visualization and Interpretation Solution." The dateline is New Orleans. The first sentence is "Landmark, a brand of Halliburton (NYSE: HAL) Digital and Consulting Solutions division, is introducing a new high-performance team-room visualization and interpretation solution at the Society of Exploration Geophysicists (SEG) trade show in New Orleans." On the third unnumbered page of Article 3, there is a quotation attributed to David B. Wright, CEO, for Verari Systems, as follows: "The development of the Verari Systems E&P 7500 server and our latest relationship with Landmark create a powerful and cost-effective solution for oil and gas companies that are managing and operating digital oil fields. We are excited to bring to market the world's most scalable, industry -standards-based visualization solutions specifically designed to support the computer-intensive oil

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

and gas industry, and to meet its demanding needs.” Thus, this article appears to be an announcement of a product shown to the Society of Exploration of Geophysicists trade show. The goods and services of the present application are directed to business managers, not to geophysicists. This does not establish that “digital oil field” is generic for the present goods and services, which include computer software for business-to-business e-commerce services, licensing of computer software, provision of a site on the global computer network for *inter alia* business collaboration services, computer services, and provision of a site on the global computer network for authentication services, as recited in Classes 9, 35, 38, 42 and 45 of the present application.

Article 4 is from Market Wire, Incorporated dated October 2, 2006, titled “Dr. Scott Shemwell Appointed Wescorp Energy’s Chief Operating Office.” The dateline is Edmonton, Alberta Canada. On the second unnumbered page of Article 4, there is a quotation from Dr. Shemwell which includes “Flowstar’s accurate measurement, timely data collection, and secure data storage are key elements in creating economic digital oilfields.” Later in the article there is a sentence that “our Flowstar Technologies, Inc. division ([www.flowstardcr.com](http://www.flowstardcr.com)) produces advanced natural gas and gas liquids measuring devices based on a patented turbine-based Digital Chart Recorder (DCR) metering system.” Thus, this article reads like a press release rather than an article prepared by an independent source. Dr. Shemwell appears to use the term “digital oilfield” to refer to the collection by digital electronic devices of information on the production of natural gas and gas liquids in the field. This does not establish that DIGITAL OILFIELD is generic for the computer

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

software for business-to-business e-commerce services, licensing of computer software, provision of a site on the global computer network offering *inter alia* business-to-business collaboration services, computer services, and provision of a site on the global computer network providing user authentication services, as recited in Classes 9, 35, 38, 42 and 45 of the present application. The Office Action cites no authority for the proposition that a term allegedly generic in a foreign country, is proof that the term is generic in the United States.

Article 5 attached to the Office Action dated February 23, 2007, is apparently from PR Newswire Association LLC dated July 12, 2006, titled “Weatherford Signs Three-Year Agreement with Statoil...” The dateline is Trondheim, Norway. The article includes a quotation from the Vice President of product optimization of Weatherford, which states “this project allows Weatherford to further increase its optical sensing portfolio, plus integrate all of the sensors into a new generation subsea communications architecture... The role it plays in delivering the digital oilfield vision – shared by so many of our industry – is very transparent.” This quotation indicates that the term “digital oilfield” is used for the gathering of information from subsea sensors. This does not establish that the present mark DIGITAL OILFIELD is generic for the goods and services of the present application. For example, the goods in Class 9 of the present application include computer software for business-to-business e-commerce services in the international oil and gas industry, namely, software used to facilitate the receipt, coding and authorization of invoices.” The processing of invoices is much different than the processing of information from sensors in subsea oil fields.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

Article 6 attached to the Office Action dated February 23, 2007, appears to be from the UPI dated June 28 2006, with a title “Schlumberger Buys Quorum Software” and dateline Houston, Texas. The first line reads “oil-exploration giant Schlumberger bought out a production volumes management technology application from Quorum Business Solutions.” The article includes a quotation from a corporate officer that “the acquisition of the QVM technology supports our vision of the digital oilfield by expanding our portfolio beyond conventional industry offerings to include production operations, engineering, management and accounting.” The volume management software is defined as a “field operations data management system used in managing oilfields.” The management of oilfields is not included in the present application, which seeks to register the mark DIGITAL OILFIELDS for computer software for business-to-business e-commerce services, licensing of computer software, provision of a site on the global computer network for *inter alia* business-to-business collaboration services, computer services, and provision of a site on the global computer network for user authentication services, as recited in Classes 9, 35, 38, 42 and 45 of the present application.

Article 7 attached to the Office Action dated February 23, 2007, is from Business Wire, Inc. dated May 1, 2006, and titled “Halliburton Unveils eRedBook (TM) software...” The dateline is Houston, Texas. This software is described as including a “navigation system that allows for faster access to accurate information, calculations and design tools to help improve decision making.” A corporate officer describes the software as “the most complete digital oilfield tool kit available

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

today.” This is a “digital tool kit that offers quick and reliable calculators for computations used in daily operations” and other features. This is different from the software of the present application which includes “software used to facilitate the receipt, coding and authorization of invoices” as recited in Class 9. This article does not prove that DIGITAL OILFIELD is generic for the goods and services in the present application.

Article 8 attached to the Office Action dated February 23, 2007, is from *The Houston Chronicle* dated April 30, 2006, under the headline “Innovations Reach New Depths...” The article is based in part on an interview with Jonathan Lewis, a vice president of innovation for Halliburton. The article states that “Shell and Saudi Aramco have been big adopters of Halliburton’s digital oil-field technology, and Lewis hopes others will be convinced to follow suit by customer claims of shaving down drilling costs significantly.” This article uses digital oil-field to refer to technology associated with reducing drilling costs. This is different from the goods and services of the present application.

Article 9 attached to the Office Action dated February 23, 2007, is from Businesswire Inc. dated April 10, 2006, under the headline “Landmark and Pavilion Technologies Work Together to Advance the Digital Oil Field of the Future.” The dateline is Texas. The article describes Landmark as a brand of Halliburton. The article states that the “combination of Landmark and Pavilion technologies will position Landmark as the leading provider of the Integrated Production Operations

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

solutions to meet the production challenges faced by the industry.” The article goes on to state that the “company’s software solutions span exploration, production, drilling, business decision analysis and data management.” This does not establish that the present mark DIGITAL OILFIELD is generic for the goods and services of the present application.

Article 10 attached to the Office Action dated February 23, 2007, appears to be a series of web pages. The first page includes “Digital Oilfield” above what appears to be a photograph of an off-shore oil drilling platform with the name “Holland & Davis” above the photograph. Underneath the photograph, there is the text “Business Success Solutions for the Digital Oilfield (DOF).” In the second full paragraph underneath the photograph, there are the statements that “leveraging rapidly-advancing digital technology promises to revolutionize parts of the work in the oil patch if, and only if, it is successfully implemented! More and better data, real-time decision-making capability, remote manipulation and smart assets portend gains in performance, productivity and profits.” This uses “Digital Oilfield” in association with production from oil fields. This is different from the goods and services in the present application.

Article 11 attached to the Office Action dated February 23, 2007 appears to be web pages. The first page includes Energy Insights. “The web page includes “this Energy Insights report presents the opportunities and challenges for business process improvement in the exploration and

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

production (E&P) industry through digital oilfield initiatives.” This is different from the goods and services in the present application.

Article 12 attached to the Office Action dated February 23, 2007, comprises the beginning of an article titled “Continuing Education Needs for the Digital Oil Fields of the Future” with a copyright 2005 by the Society of Petroleum Engineers. The first sentence of the Abstract refers to an “industry-wide push to develop the framework for the digital oilfields of the future (called by different names in the industry, smart fields, i-field, efield, digital oil field of the future, or DOFF...etc.).” The next sentence describes these as “the development of hardware and software tools that measure, analyze and optimize process systems.” This is different from the goods and services of the present application.

Article 13 attached to the Office Action dated February 23, 2007, comprises web pages. The first page is titled “Digital oil field of the future” with an indication that this is from the “Norwegian Petroleum Directorate.” The web page includes the statement “the digital oil field of the future is a suite of technologies that allow producers to extract a larger percentage of the oil from a field at lower cost.” The article indicates that “digital oil field” is a term associated with the production of oil from an oil field. This is different from the goods and services of the present application.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

Article 14 attached to the Office Action dated February 23, 2007, comprises web pages about Halliburton's eRedBook software, which is also the subject of Article 7. This software offers a digital tool kit with a number of features, including "an interactive wellbore tool to share well schematics faster than ever before." This article uses "digital oilfield" in association with technologies to produce oil and gas from oil fields. This is different from the goods and services in the present application.

Article 15 attached to the Office Action dated February 23, 2007, comprises images of web pages under the title "Landmark and Pavilion Technologies Work Together to Advance the Digital Oilfield of the Future" dated April 10, 2006. The text appears to be the same as Article 9.

Article 16 attached to the Office Action dated February 23, 2007, appears to be a single web page titled "CAT.INIST.FR," partially in French that states with some "digital oil field vision, ... we can uncover hidden sources of production growth lying dormant in the wells and facilities we already operate." This is different from the present good and services.

Article 17 attached to the Office Action dated February 23, 2007, comprises web pages under the title "HRH geological services." The text begins with the sentence "drilling for oil has never been routine." The article refers to the "E&P industry" and states that the "right technology can unlock the potential of the digital oilfield, ensuring long term competitiveness and securing

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

maximum leverage from your data. The text goes on to describe “our pioneering Gravitass software suite not only connects geologists to the digital oilfield for the first time, it integrates all your well data and links asset and office to take you to new levels of data optimization. Gravitass is the corporate electronic wellfile.” This uses the term “digital oilfield” in relation to the production from oil fields. This is different from the goods and services of the present application.

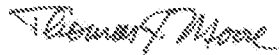
Article 18 attached to the Office Action dated February 23, 2007, comprises web pages and is titled “Digital Oilfield” dated October 2006. The text includes “facilitate implementation of the digital oilfield by integration of information technology, people, processes in the oilfield business by providing best practices for integration of information technology between sub-surface and field operations....” This uses the term “digital oilfield” in association with the production from oil fields. This is different from the goods and services of the present application.

**APPLICANT'S BRIEF**  
**U.S. Application No. 76127133**

**CONCLUSION**

Applicant respectfully submits that the application should be approved for registration because the mark is capable of distinguishing the goods and services.

Respectfully submitted,



Thomas J. Moore  
Applicant's Attorney

BACON & THOMAS, PLLC  
625 Slaters Lane, Fourth Floor  
Alexandria, Virginia 22314-1176  
Phone: 703-683-0500  
Fax: 703-683-1080  
E-mail: mail@baconthomas.com  
Date: April 27, 2007

S:\Producer\tjm\ep\DIGI6002\2007.04.27.Applicant's Brief.wpd